

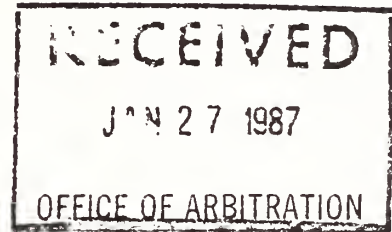
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IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,
STATUTES OF ONTARIO, 1981, CHAPTER 53, AS AMENDED

AND IN THE MATTER OF a complaint by Mr. Gaston Taylor
of Ottawa, Ontario against Via Security Systems, Inc.,
Its Servants and Agents, and Mr. William Leverington.

BOARD OF INQUIRY

A.F. Bayefsky



Appearances

Mr. James Fleming

Counsel for the Ontario
Human Rights Commission

Mr. John E. Merner

Counsel for the
Respondent, Via Security
Systems Inc., Its
Servants and Agents,
and Mr. William
Leverington.

SUPPLEMENTARY DECISION

Damages for Lost Wages

At the conclusion of my decision of September 24, 1986, I requested submissions on the quantum of compensation for lost wages. I received them from counsel for the complainant by letters dated December 9, 1986 and January 16, 1987. I received submissions from counsel for the respondents by letter dated January 8, 1987. On the basis of those submissions and the evidence adduced at the hearing, I have arrived at the following conclusions.

Employment for the Amberwood contract commenced on February 21, 1983. The complainant, Mr. Taylor, was available for work between the period of February 21, 1983 and April 8, 1983 and on April 11, 1983 he took up a position as a security guard. The rate of pay (less the cost of the fee for uniforms charged by Via) for the terms of the Amberwood contract was \$3.75 per hour.

The respondents hired four individuals for the Amberwood contract. The contract called for two full-time and two part-time security guards and the respondent hired four individuals to fill the positions as needed to fulfill the contract. The two individuals who were hired for the part-time positions, Mr. Lapointe and Mr. MacLeod, were students at the time they worked for the respondents and indicated on their application forms that they were available for evening and weekend work only. The application forms of Mr. Tye and Mr. Bell, who were both hired for full-time positions, indicated that

they were available at any time. Mr. Taylor testified that he completed the section of the application form concerning availability for work in the same manner as Mr. Tye and Mr. Bell. At the time of his application to the respondents he was unemployed and available for full-time work.

Under these circumstances, it is reasonable to conclude that had Mr. Taylor been selected for the position he would have been hired as a full-time employee.

Mr. Bell testified that his full-time employment amounted to approximately eight-hour shifts. Written submissions by respondents' counsel admit that Mr. Bell and Mr. Tye worked 133 hours over a four-week period or 238 hours over a seven-work period, which amounts to approximately 33.5 hours per week.

Respondents' counsel states in his written submissions that the Amberwood contract was secured on a month to month basis; hence he suggests that the relevant time period for calculating lost wages is four weeks. However, the evidence adduced during the hearing indicates that the four employees hired at the outset for the Amberwood contract were all employed thereunder beyond the April 8, 1983 cut-off date. Thus, even if the Amberwood contract was secured on a month-to-month basis, it is reasonable to conclude that the complainant would have been employed under the Amberwood contract for the seven week period for which he was available for work following the commencement of the contract.

The respondents do not suggest that the complainant failed to mitigate his damages during this seven week period.

Section 40(1)(b) of the Code states that the Board is empowered to direct the party having infringed the right of the complainant to make restitution for loss arising out of the infringement. Restitution in the context of this case means that the complainant should be placed in the position that he would have been in had he been hired and the contract of employment been performed. Here restitution in the form of lost wages is the loss associated with a 33.5 hour work week, a seven week period, and a rate of pay of \$3.75 per hour. This amounts to \$879.38.

Previous Boards of Inquiry have held that interest is payable on damage awards. (see Cameron v. Nel-Gor Castle Nursing Home and Merlene Nelson, 5 C.H.R.R. D/2170 at paragraph 18564) Interest would appear to fall within the terms of section 40(1)(b), specifically, "loss arising out of the infringement".

The rate of interest is the rate established by the Bank of Canada on the date of the complaint. The amount of interest due on the damages for lost wages is:

(the date of payment - the mid-point of the lost wage period) x total wages for the lost wage period x Bank of Canada rate at the date of the complaint.

(see: Hallowell House Limited, [1980] OLRB Rep. Jan. 35; Practice Note No. 13, September 8, 1980, Ontario Labour Relations Board) In this case the rate of interest on June 15, 1983 established by the Bank of Canada was 11%. Assuming that damages will be paid February 15, 1987, the amount of interest due in this case is

(February 15, 1987 - (mid-point of the period February 21, 1983 to April 8, 1983) x \$879.38 x 11%, or ((February 15, 1987 - March 16, 1983) = 3.92 years) x \$879.38 x 11% = \$379.19.

I have determined that it would not be just in the circumstances to award interest on the general damages.

Contrary to the submission of the respondents, no deduction from this award should be made in connection with Canada Pension Plan or income tax obligations.



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IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,
STATUTES OF ONTARIO, 1981, CHAPTER 53, AS AMENDED

AND IN THE MATTER OF a complaint by Mr. Gaston Taylor
of Ottawa, Ontario against Via Security Systems, Inc.,
Its Servants and Agents, and Mr. William Leverington.

FINAL ORDER

This matter coming on for hearing on the 15th day of May, the 5th and 6th days of June, and the 11th day of September, 1986, before this Board of Inquiry, pursuant to the appointment by William Wrye, Minister of Labour, dated 16th day of April, 1986, in the presence of Counsel for the Commission and Mr. Gaston Taylor, the Complainant, and Counsel for the respondents, upon hearing evidence adduced by the parties and what was alleged by the parties, and upon finding that the complaint was substantiated by the evidence:

IT WAS ORDERED PURSUANT TO THE INTERIM ORDER (dated 24th day of September, 1986) THAT:

- (1) The respondents pay to the complainant the sum of three hundred dollars (\$300.00) for mental anguish caused as a result of the discriminatory act; and
- (2) The respondents send a letter of apology to the complainant for the failure to abide by the Human Rights Code in its treatment of the complainant.

IN ADDITION IT IS ORDERED THAT:

- (3) The respondents pay to the complainant the sum of eight hundred and seventy-nine dollars and thirty-eight cents (\$879.38) as damages for lost wages; and
- (4) The respondents pay to the complainant the sum of three hundred and seventy-nine dollars and nineteen cents (\$379.19) as interest up to February 15, 1987.

DATED at the City of Toronto in the Judicial District of York,
the 26th day of January, 1987.



A.F. Bayefsky
Board of Inquiry

THE STATE OF NEW YORK
IN SENATE
January 12, 1901.

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1899.

ALBANY:

1901.

W. H. BROWN,

PRINTED BY

THE STATE

OF NEW YORK

AND

THE

LAND OFFICE

ALBANY.

1901.

W. H. BROWN,

PRINTED BY

THE STATE

OF NEW YORK

UNIVERSITÉ D'OTTAWA

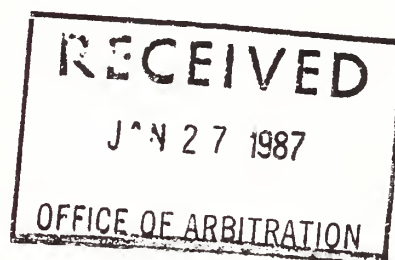


UNIVERSITY OF OTTAWA

January 26, 1987

Mr. John E. Merner,
Mattar, Merner,
325 Dalhousie Street, Suite 900,
Ottawa, Ontario
K1N 7G2

Mr. Jim Fleming,
Legal Services,
Ministry of Labour,
7th floor,
400 University Avenue,
Toronto, Ontario
M7A 1T7



Dear Sirs:

I enclose a copy of my supplementary decision as the Board of Inquiry in the matter of a complaint by Mr. Gaston Taylor of Ottawa, against Via Security Systems, Inc., Its Servants and Agents, and Mr. William Leverington.

Sincerely,

Professor Anne Bayefsky

cc. Ms. Thelma Hamilton

UNIVERSITY OF CALIFORNIA



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training, but had only granted leaves to train persons in fields in which they already were employed. This decision by the Society appears to me to have been a reasonable one for the Society to make. Religion did not appear to have been a factor in the decision. Indeed, according to the evidence, the key decision makers did not seem to know Ms. Lothian's religion.

31404 Ms. Lothian then requested that she be given a part-time position at an hourly rate, without benefits, sharing the position equally with another person. This arrangement was supported by the Scarborough branch, in part because it would enable them to train another person who would take over Ms. Lothian's position on a full-time basis at the end of the eight-month period. The branch, in fact, arranged for

someone to share the position on this basis. In August, however, it became evident to the Scarborough branch that Ms. Lothian would need a second leave in the following year and planned to work full-time with the Society over the summer. The person who would have been interested in sharing the job if there had been only one leave was not interested in such an arrangement. The branch decided that under these circumstances a shared position was not desirable from the point of view of business efficiency. Again, the decision appears to me to have been a reasonable one for the Society to make. As in the earlier decision, religion did not appear to have been a factor.

31405 I therefore dismiss the complaint. This is not a case for awarding costs against the Commission under section 40(6).

CANADIAN HUMAN RIGHTS REPORTER

ONTARIO / DAMAGES / EMPLOYMENT / PLACE OF ORIGIN Board of Inquiry Taylor v. Via Security Systems Inc.

Volume 8, Decision 631

Paragraphs 31406 - 31420

June 1987

Board of Inquiry Decision under the
ONTARIO HUMAN RIGHTS CODE

Gaston Taylor	
v.	Complainant
Via Security Systems Inc.	
and	
William Leverington	Respondents

Date of Decision: January 26, 1987
Place: Toronto, Ontario
Before: A. F. Bayefsky
Appearances by: James Fleming, Counsel for the
Ontario Human Rights Commission
John E. Merner, Counsel for Via
Security Systems Inc. and William
Leverington

Summary: *This is an order for remedy in the case of Gaston Taylor. The Board of Inquiry earlier determined (reported at 8 C.H.R.R. D/3925) that Taylor was discriminated against because of his place of origin when he was refused employment as a security guard with Via Security Systems.*

The Board of Inquiry orders Via to pay Taylor \$879.38 in compensation for lost wages, \$300 in general damages, and \$379.19 in interest.

Damages for Lost Wages

31406 At the conclusion of my decision of September 24, 1986, I requested submissions on the quantum of compensation for lost wages. I received them from counsel for the complainant by letters dated December 9, 1986 and January 16, 1987. I received submissions from counsel for the respondents by letter dated January 8, 1987. On the basis of those submissions and the evidence adduced at the hearing, I have arrived at the following conclusions.

31407 Employment for the Amberwood contract commenced on February 21, 1983. The complainant, Mr. Taylor, was available for work between the period of February 21, 1983 and April 8, 1983 and on April 11, 1983 he took up a position as a security guard. The rate of pay (less the cost of the fee for uniforms charged by Via) for the terms of the Amberwood contract was \$3.75 per hour.

31408 The respondents hired four individuals for the Amberwood contract. The contract called for two full-time and two part-time security guards and the respondent hired four individuals to fill the positions as needed to fulfill the contract. The two individuals who were hired for the part-time positions, Mr. Lapointe and Mr. MacLeod, were students at the time they worked for the respondents and indicated on their application forms that they were available for evening and weekend work only. The application forms of Mr. Tye and Mr. Bell, who were both hired for full-time positions, indicated that they were available at any time. Mr. Taylor testified that he completed the section of the application form

concerning availability for work in the same manner as Mr. Tye and Mr. Bell. At the time of his application to the respondents he was unemployed and available for full-time work.

31409 Under these circumstances, it is reasonable to conclude that had Mr. Taylor been selected for the position he would have been hired as a full-time employee.

31410 Mr. Bell testified that his full-time employment amounted to approximately eight-hour shifts. Written submissions by respondents' counsel admit that Mr. Bell and Mr. Tye worked 133 hours over a four-week period or 238 hours over a seven-week period, which amounts to approximately 33.5 hours per week.

31411 Respondents' counsel states in his written submissions that the Amberwood contract was secured on a month to month basis; hence he suggests that the relevant time period for calculating lost wages is four weeks. However, the evidence adduced during the hearing indicates that the four employees hired at the outset for the Amberwood contract were all employed thereunder beyond the April 8, 1983 cut-off date. Thus, even if the Amberwood contract was secured on a month-to-month basis, it is reasonable to conclude that the complainant would have been employed under the Amberwood contract for the seven week period for which he was available for work following the commencement of the contract.

31412 The respondents do not suggest that the complainant failed to mitigate his damages during this seven week period.

31413 Section 40(1)(b) of the Code states that the Board is empowered to direct the party having infringed the right of the complainant to make restitution for loss arising out of the infringement. Restitution in the context of this case means that the complainant should be placed in the position that he would have been in had he been hired and the contract of employment been performed. Here restitution in the form of lost wages is the loss associated with a 33.5 hour work week, a seven week period, and a rate of pay of \$3.75 per hour. This amounts to \$879.38.

31414 Previous boards of inquiry have held that interest is payable on damage awards. (See *Cameron v. Nel-Gor Castle Nursing Home and Merlene Nelson*, 5 C.H.R.R. D/2170 at paragraph 18564.) Interest would appear to fall within the terms of section 40(1)(b), specifically, "loss arising out of the infringement".

31415 The rate of interest is the rate established by the

Bank of Canada on the date of the complaint. The amount of interest due on the damages for lost wages is:

(the date of payment—the mid-point of the lost wage period) × total wages for the lost wage period × Bank of Canada rate at the date of the complaint.

(See: *Hallowell House Limited*, [1980] OLRB Rep. Jan. 35; Practice Note. No. 13, September 8, 1980, Ontario Labour Relations Board.) In this case the rate of interest on June 15, 1983 established by the Bank of Canada was 11%. Assuming that damages will be paid February 15, 1987, the amount of interest due in this case is:

(February 15, 1987 – (mid-point of the period February 21, 1983 to April 8, 1983)) × \$879.38 × 11%, or ((February 15, 1987–March 16, 1983) = 3.92 years) × \$879.38 × 11% = \$379.19.

31416 I have determined that it would not be just in the circumstances to award interest on the general damages.

31417 Contrary to the submission of the respondents, no deduction from this award should be made in connection with Canada Pension or income tax obligations.

Final Order

31418 This matter coming on for hearing on the 15th day of May, the 5th and 6th days of June, and the 11th day of September, 1986, before this Board of Inquiry, pursuant to the appointment by William Wrye, Minister of Labour, dated 16th day of April, 1986, in the presence of counsel for the Commission and Mr. Gaston Taylor, the complainant, and counsel for the respondents, upon hearing evidence adduced by the parties and what was alleged by the parties, and upon finding that the complaint was substantiated by the evidence:

31419 IT WAS ORDERED PURSUANT TO THE INTERIM ORDER (dated 24th day of September, 1986) THAT:

(1) The respondents pay to the complainant the sum of three hundred dollars (\$300.00) for mental anguish caused as a result of the discriminatory act; and

(2) The respondents send a letter of apology to the complainant for the failure to abide by the *Human Rights Code* in its treatment of the complainant.

31420 IN ADDITION IT IS ORDERED THAT:

(3) The respondents pay to the complainant the sum of \$879.38 as damages for lost wages; and

(4) The respondents pay to the complainant the sum of \$379.19 as interest up to February 15, 1987.

